

¹ Although Cordero's three appeals have not been consolidated into one cause number, we will address all three in one opinion in the interest of efficiency.

Appellant-Defendant Armando Cordero appeals from the revocation of the probation imposed following his convictions for Class D felony Resisting Law enforcement,² Class A misdemeanor Operating a Vehicle while intoxicated,³ and Class A misdemeanor Driving While suspended.⁴ Cordero also appeals from the sentences imposed following his guilty pleas to two counts of Class D felony Residential Entry⁵ and Class B misdemeanor Criminal mischief.⁶ We affirm.

FACTS

Cause Number 57D01-0506-FD-99 (“Cause 99”)

On June 12, 2005, Cordero, who was intoxicated and whose driver’s license was suspended, refused to pull his Chevrolet Malibu over when approached from behind by a police vehicle with its emergency lights on. The State charged Cordero with Class D felony resisting law enforcement, Class A misdemeanor resisting law enforcement, Class A misdemeanor operating a motor vehicle while intoxicated (“OWI”), and Class A misdemeanor driving while suspended. On November 11, 2005, Cordero pled guilty to Class D felony resisting law enforcement, OWI, and driving while suspended.

On January 20, 2006, the trial court sentenced Cordero to two years of incarceration for resisting law enforcement and one year each for OWI and driving while

² Ind. Code § 35-44-3-3 (2004).

³ Ind. Code § 9-30-5-2 (2004).

⁴ Ind. Code § 9-24-19-2 (2004).

⁵ Ind. Code § 35-43-2-1.5 (2005, 2006).

⁶ Ind. Code § 35-43-1-2 (2005).

suspended, ordered that all sentences be served concurrently, and suspended all but sixty days of the aggregate sentence to probation.

On July 10, 2007, the State filed a notice of probation violation, alleging that Cordero had violated the terms of his probation because he failed to report to a scheduled appointment with the Noble County Probation Department and was charged with invasion of privacy. After Cordero admitted that he had violated the terms of his probation, the trial court ordered him to serve twelve months of his previously suspended sentence on August 10, 2007.

Cause Number 57D01-0706-FD-158 (“Cause 158”)

On June 9, 2007, Cordero entered the home of his ex-wife Amanda Cordero without her permission by pushing the door in. Once inside, Cordero took some infant formula and left. On June 11, 2007, the State charged Cordero with Class D felony residential entry and Class B misdemeanor criminal mischief. That day, Cordero pled guilty as charged. On August 10, 2007, the trial court sentenced Cordero to one year of incarceration for residential entry and 180 days for Class B misdemeanor criminal mischief and ordered that both sentences would be served concurrently with each other but consecutively with the sentence ordered in Cause 99. In sentencing Cordero, the trial court took into account his criminal record and his guilty plea.

Cause Number 57D01-0707-FD-182 (“Cause 182”)

On July 5, 2007, Cordero entered Amanda’s home without her permission because he wanted to see their daughter. On July 10, 2007, the State charged Cordero with Class D felony residential entry. That day, Cordero pled guilty as charged. On August 10,

2007, the trial court sentenced Cordero to one and one-half years of incarceration for residential entry and ordered that his sentence be served consecutively with those imposed in Causes 99 and 158. In sentencing Cordero, the trial court took into account his criminal record and his guilty plea.

DISCUSSION AND DECISION

Cause 99

Probation Revocation

Cordero contends that the trial court erred in ordering that he serve twelve months of his previously suspended sentence following his admission that he had violated the terms of his probation. Probation is a “matter of grace” and a “conditional liberty that is a favor, not a right.” *Marsh v. State*, 818 N.E.2d 143, 146 (Ind. Ct. App. 2004) (quoting *Cox v. State*, 706 N.E.2d 547, 549 (Ind. 1999)). We review a trial court’s probation revocation for an abuse of discretion. *Sanders v. State*, 825 N.E.2d 952, 956 (Ind. Ct. App. 2005), *trans. denied*. If the trial court finds that the person violated a condition of probation, it may order the execution of any part of the sentence that was suspended at the time of initial sentencing. *Stephens v. State*, 818 N.E.2d 936, 942 (Ind. 2004).

Here, Cordero admitted that he violated the terms of his probation by failing to meet with his probation officer as scheduled and by violating the laws of Indiana. Cordero’s admissions amply support a trial court finding that he did, in fact, violate the terms of his probation, and the trial court, therefore, was justified in ordering the execution of twelve months of Cordero’s previously suspended sentence. The trial court

did not abuse its discretion in revoking Cordero's probation and ordering that he serve a portion of his suspended sentence.

Causes 158 and 182

Standards of Review

I. Abuse of Discretion

Cordero's offenses were committed after the April 25, 2005, revisions to Indiana's sentencing scheme. Under this new scheme, "the trial court must enter a statement including reasonably detailed reasons or circumstances for imposing a particular sentence." *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007). We review the sentence for an abuse of discretion. *Id.* An abuse of discretion occurs if "the decision is clearly against the logic and effect of the facts and circumstances." *Id.*

A trial court abuses its discretion if it (1) fails "to enter a sentencing statement at all[.]" (2) enters "a sentencing statement that explains reasons for imposing a sentence—including a finding of aggravating and mitigating factors if any—but the record does not support the reasons," (3) enters a sentencing statement that "omits reasons that are clearly supported by the record and advanced for consideration," or (4) considers reasons that "are improper as a matter of law." *Id.* at 490-91. If the trial court has abused its discretion, we will remand for resentencing "if we cannot say with confidence that the trial court would have imposed the same sentence had it properly considered reasons that enjoy support in the record." *Id.* at 491. However, under the new statutory scheme, the relative weight or value assignable to reasons properly found, or to those which should have been found, is not subject to review for abuse of discretion. *Id.*

II. Appropriateness

We “may revise a sentence authorized by statute if, after due consideration of the trial court’s decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender.” Ind. Appellate Rule 7(B). “Although appellate review of sentences must give due consideration to the trial court’s sentence because of the special expertise of the trial bench in making sentencing decisions, Appellate Rule 7(B) is an authorization to revise sentences when certain broad conditions are satisfied.” *Shouse v. State*, 849 N.E.2d 650, 660 (Ind. Ct. App. 2006), *trans. denied* (citations and quotation marks omitted).

Cause 158

I. Abuse of Discretion

Cordero contends only that the trial court abused its discretion in failing to consider Cordero’s remorse to be a mitigating circumstance. While it is true that remorse can be a mitigating circumstance, *see, e.g., Cotto v. State*, 829 N.E.2d 520, 526, “substantial deference must be given to a trial court’s evaluation of remorse.” *Corralez v. State*, 815 N.E.2d 1023, 1025 (Ind. Ct. App. 2004). “The trial court, which has the ability to directly observe the defendant and listen to the tenor of his or her voice, is in the best position to determine whether the remorse is genuine.” *Id.*

Here, to support his claim of remorse, Cordero points only to his statement that “I have to face the consequences and I am willing to accept that. What I did was wrong.” Cause 158 Tr. p. 36. Even if one accepts this statement as one of remorse, the trial court was under no obligation to credit it, and we see nothing else in the record to establish

Cordero's remorse. Under the circumstances, we cannot say that Cordero's alleged remorse was clearly supported by the record and so will not second-guess the trial court on this point. The trial court did not abuse its discretion in sentencing Cordero.

II. Appropriateness

The nature of Cordero's offense was residential entry by physical force. Although Cordero claims that he committed this crime so that he could obtain infant formula for his daughter, he does not explain why he could not have simply bought some. As the trial court pointed out, "there is a right way and a wrong way to do everything and [Cordero] consistently chose the wrong way." Cause 158 Tr. p. 40.

As for Cordero's character, it is that of a repeat offender who, although only twenty-four years old at sentencing, had amassed an extensive criminal history and shown himself unwilling to conform his behavior to acceptable standards. When he committed the instant offenses, Cordero had prior convictions for Class D felony theft, Class A misdemeanor marijuana possession, Class A misdemeanor driving while suspended, Class A misdemeanor invasion of privacy, Class A misdemeanor criminal trespass, Class B misdemeanor criminal mischief, Class B misdemeanor public intoxication, four counts of Class C misdemeanor minor consumption of alcohol, and Class C misdemeanor operating having never been licensed. (Cause 158 Supp. App. 3-4). Additionally, Cordero has had his probation revoked three previous times. (Cause 158 Supp. App. 3-4). Cordero's numerous convictions and periods of incarceration have not caused him to reform himself, and he has repeatedly squandered the opportunities

afforded by probation. In light of the nature of his offense and his character, Cordero's one-year aggregate sentence in Cause 158 is appropriate.

Cause 182

I. Abuse of Discretion

Here, as in Cause 158, to support his claim of remorse, Cordero points only to his statement that "I have to face the consequences and I am willing to accept that. What I did was wrong." Cause 158 Tr. p. 36. Even if one accepts this statement as one of remorse, the trial court was under no obligation to credit it, and we see nothing else in the record to establish Cordero's remorse. Under the circumstances, we cannot say that Cordero's alleged remorse was clearly supported by the record and so will not second-guess the trial court on this point. The trial court did not abuse its discretion in sentencing Cordero.

II. Appropriateness

The nature of Cordero's offense was residential entry by physical force. Although Cordero claims that he committed this crime so that he could see his daughter, he does not explain why he could not have pursued legal avenues for doing so. As the trial court asked Cordero at sentencing, "How much time have I spent with you on these [criminal] matters when I could have spent that time, I suppose, getting you your legal rights for your parenting time in a legal constructive manner and in a manner I would enforce[?]" Cause 182 Tr. p. 39.

As previously stated, Cordero's character it is that of a repeat offender who, although only twenty-four years old at sentencing, had amassed an extensive criminal

history and shown himself unwilling to conform his behavior to acceptable standards. At the time he committed the instant offense, Cordero had prior convictions for Class D felony theft, Class D felony residential entry, Class A misdemeanor marijuana possession, Class A misdemeanor driving while suspended, Class A misdemeanor invasion of privacy, Class A misdemeanor criminal trespass, two counts of Class B misdemeanor criminal mischief, Class B misdemeanor public intoxication, four counts of Class C misdemeanor minor consumption of alcohol, and Class C misdemeanor operating having never been licensed. (Cause 158 Supp. App. 3-4). Additionally, Cordero has had his probation revoked three previous times. (Cause 158 Supp. App. 3-4). Cordero's numerous convictions and periods of incarceration have not caused him to reform himself, and he has repeatedly squandered the opportunities afforded by probation. In light of the nature of his offense and his character, Cordero's one-and-one-half-year sentence for Class D felony residential entry in Cause 182 is appropriate.

The judgment of the trial court in Causes 99, 158, and 182 is affirmed.

BAKER, C.J., and DARDEN, J., concur.